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January 17, 2006

**VIA FACSIMILE and  
UNITED STATES MAIL**

Eric Thompson  
 Children's Rights Incorporated  
 404 Park Avenue South  
 New York, NY 10016

RE: *Olivia Y., et al. v. Haley Barbour, et al.*; In the United States District Court for the Southern District of Mississippi, Jackson Division; Cause No. 3:04CV251LN

Dear Mr. Thompson:

This letter is in response to yours of December 21, 2005, August 17, 2005 and August 25, 2005. The responses to the latter two letters were delayed due to Hurricane Katrina and the stay of litigation. We did not receive the July 25, 2005 letter referenced in your December 21, 2005 letter and request that you provide us with the same in short order. Today the Defendants will make their quarterly production of documents. This afternoon the documents will be delivered to your designated copier and forwarded to Bradley Arant.

**First Request for Production of Documents*****Documents Identified by Kathy Triplett in Her Deposition Testimony***

The Court ordered the production of the manual log and the electronic report identified by Kathy Triplett in her deposition. We have confirmed with Ms. Triplett that the electronic record that she was referring to in her deposition is the previously-produced Count of Maltreated Children While in Custody in a Placement (Bates No. DHS 041078-041079). In addition, we previously produced the manual logs referenced in Ms. Triplett's deposition (Bates No. DHS 053503-053529). We have also previously produced OOH out of home investigation reports (Bates No. DHS 053450-053502) which Kathy Triplett referred to in her deposition (Triplett Deposition, p. 32). Please identify and clarify the documents that you contend have not been produced pursuant to the court's order.

***Responsive E-Mail and Other Digital Communications***

EXHIBIT

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As for the production of electronic mail and other electronic documents, we have always requested from the Defendants the inclusion of responsive electronic documents for each of the Plaintiffs' document requests. The Defendants will produce any additional responsive emails today in the January 17, 2006 document production.

*Documents Previously Withheld or Redacted Due to Attorney Client Privilege Assertion*

These documents compelled by the Court's July 18, 2005 order were provided to you on January 3, 2006.

*Documents from the Governor*

On July 14, 2005, the Defendants produced documents from the Governor. (See DHS 047762-05B288)

*Documents testified to by Martha McDaniel during her July 20, 2005 deposition*

Maltreatment-in-care documents:

The documents Ms. McDaniel testified that she filed in her office will be produced in today's production of documents.

Regional Practice Guides: We understand from your letter that you request the production of regional practice guides. Ms. McDaniel testified that "we are in the process of looking at developing the regional action plan . . ." We continue our objection to 1<sup>st</sup> RPD, Document No. 2 to the extent that it is overly-broad and unduly burdensome and would require MDHS to produce documents that have not been fully implemented. We understand that MDHS has a draft of a guide to regional action plans, but the guide has not been fully implemented. Without waiving the objections, MDHS will produce this draft today, subject to the completion and full implementation of the guide.

MACWIS Screens for Emergency Shelter Placement Policies: MDHS maintains its general policy and procedures manual (which addresses emergency shelter placements). The hard copy of the manual was previously produced to the Plaintiffs. A print-out of the policy and procedures manual as retained in MACWIS will be provided during the January 17, 2006 production. There are currently no MACWIS screens in use that address emergency shelter placements.

Criteria for Distant Placement of Children and Separation of Siblings: Plaintiffs' 1<sup>st</sup> RPD, Document Request No. 2 requests production of policies that are in effect as of March 30, 2004 and thereafter regarding selection of placements for children in MDHS custody. The Defendants

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have already produced the existing policy and procedures manual, which incorporates policies affecting placements. Defendants will produce any documents that Ms. McDaniel may have for the specified period in the request for production of documents that are responsive to this specific request. Today Defendants will also produce a MACWIS Change Request for development of an approval process for placements more than 50 miles from child's original home and separation of siblings.

Requests to Fill Vacancies: Defendants will produce whatever documents that Ms. McDaniel has located in today's production.

Written Requests and Approvals of Overstays in Emergency Placements: Defendants will produce documents identified by Ms. McDaniel that were maintained by Ms. Weatherall during today's document production.

McDaniel Correspondence Concerning Transmission of Hotline Reports: Defendants will produce this correspondence identified by Ms. McDaniel during today's production.

*Periodically Generated Documents:*

Defendants will produce any such supplemental documents that they have today. We have been advised by MDHS that the "MACWIS Technical Workplan for Changes and Enhancements" you requested is not periodically generated. There is no update to this document. Please also note that no "Foster Care Review Program - Quarterly Regional Comparison Reports" was generated for the 1<sup>st</sup> quarter FY 2005. Please also be advised that there are no "Issues Observed" reports for regions in which issues have not been cited. Those regions only receive summary reports. Please see the statewide Issues Observed summary report (e.g.: DHS 58747-58749) that indicates which regions had no issues observed. MDHS was unable to locate clearer copies of DHS 014072 and 014075 per your request. MDHS was able to locate a slightly clearer copy of DHS 047548. It will be reproduced in today's production. The Community Based Family Annual Performance Report for FY 2005 has not been generated. It is expected to be completed by February 2006. No such report for FY 2006 has been generated.

Third Request for Production of Documents

*DFCS Budget Requests to DHS FY 2000-2004*

MDHS will produce any budget requests it has been able to locate in today's document production.

*DHS FY 2007 budget request submission to the Joint Legislative Budget Committee*

This document will be produced in today's production.

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*Documents concerning Mississippi's Title IV-E Waiver Project*  
Any responsive documents will be produced in today's production.

*DHS Annual Reports FY 1999 to the present*

MDHS Annual Reports for 1999-2004 will be produced in today's document production. The 2005 report has not been issued as of this date.

*Sue Perry's eligibility-rate memorandum dated March 1, 2002*  
This document will be produced in today's document production.

*MDHS Budget and funding related materials including documents maintained by the Governor's office, documents related to Mississippi's Title IV-B allocation and/or concerning Title XIX Medicaid allocation, DHS presentation materials to the Joint Legislative Budget Committee concerning its FY 2007 Budget Request, DHS correspondence/allocation memoranda to DFCS concerning DFCS budget requests (i.e.: the Budget Request Package) FY 2000-2004.*

MDHS has not made a presentation to the Joint Legislative Budget Committee concerning its 2007 Budget Request. Any responsive documents Defendants have located will be produced today.

*Title IV-E Quarterly Reports for Expenditures submitted to the federal government for June 2005 and thereafter*

These documents will be produced in today's production of documents.

*Updated DHS Cost Allocation Plans*

No new cost allocation plan has been completed.

*DFCS Weekly Significant Activities Reports after June 15, 2005.*

These reports will be produced in today's supplement.

*DFCS Monthly Budget Status Reports for May 2005 and thereafter*

These reports will be produced in today's supplement.

**Fourth Request for Production of Documents:**

*Drafts of curricula and training guides concerning family-centered practice, family team meeting and county conferences.*

These drafts will be produced in today's document production. MDHS will produce such drafts, subject to the completion and full implementation of these guides.

**Fifth Request for Production of Documents:**

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*Plans for recruiting foster-adoptive parents, individualized for each region*

We understand that 5<sup>th</sup> RPD, Document Request No. 5 requests foster care and adoptive care recruitment documents from 2004 to the present. Ms. McDaniel testified that she did not know the date of the development of her regional recruitment plan. Ms. McDaniel, upon further search, has confirmed that written documents since 2004 have not been developed. MDHS does however have a statewide draft of a Recruitment and Retention Guide. This document will be produced in the January 17, 2006, production of documents subject to the completion and full implementation of this guide.

*Provider & Licensing Files*

Document Request No. 9 states as follows: "The provider and licensing files for all foster homes, therapeutic foster homes, group homes, shelters, treatment centers and any other home, institution or agency caring for foster children." Defendants have objected to this request as overly broad and unduly burdensome in that the request would require Defendants to produce all files for all foster care providers, including foster homes, therapeutic foster homes, group homes, shelters, treatment centers and others providing care for foster children over a three-year period. As the DHS Placement Resources Document (Bates No. DHS 035980-036100) demonstrates, there are numerous MDHS placement resources. Records for these placement resources may be maintained at the state office, county offices, group homes, treatment centers, and other agencies. Furthermore, MDHS is not the licensing entity for all facilities providing services to foster children; therefore, MDHS does not maintain files on all providers.

Per your August 25, 2005 letter, you limited your request to those licensing files listed on the logs (Bates No. DHS 053503-529) and in your December 21, 2005, letter you also asked for those listed on "Attachment B" of your letter. MDHS will produce copies of these specific paper licensing files by the end of this month. We have requested that MDHS also make the accompanying MACWIS licensing files available.

*DFCS Personnel File Documents Concerning Disciplinary Actions and Personnel Files of DFCS Staff involved in the Named Plaintiffs' cases (Doc. Request Nos. 12 & 13)*

We maintain that these records are confidential in the absence of a court order. If you have legal authority to the contrary, please forward it to my attention immediately.

Named Plaintiff Supplementation

Supplemental named Plaintiff case record documents (including MACWIS documentation) through November 2005 will be produced in today's production.

01/17/06 17:49 FAX 601 352 7757

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First Set of Interrogatories

*Information from MS Dept of Health regarding unlicensed placements for children in DHS custody (Interr. No. 7(d))*

The MS Department of Health has advised that it does not maintain records in the form requested.

*Number of positions in the Attorney General's office responsible for initiating termination of parental rights petitions on behalf of children in DHS custody (Interr. No. 21)*

The Attorney General's office has advised that it has 9 attorneys on staff who work for MDHS. None of these employees are designated to handle only TPRs.

Rule 26(a)(1) Mandatory Disclosures as to the Named Plaintiffs

Rule 26.1 of the Uniform District Court Rules of the Northern and Southern Districts of Mississippi provide for the supplementation of initial disclosures to correct and complete information not otherwise provided during the discovery process. Defendants will supplement the initial disclosures in accordance with the rules.

Sincerely,

MCGLINCHEY STAFFORD, PLLC

  
Betty A. Mallett

BAM/kkr  
cc: Melody McAnally (via facsimile)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION**

**JAMES D. JOHNSON, as next friend to  
Olivia Y.; et al.**

**PLAINTIFFS**

**V.**

**CIVIL ACTION NO. 3:04CV251LN**

**HALEY BARBOUR, as Governor of the  
State of Mississippi; et al.**

**DEFENDANTS**

**DEFENDANTS' PRIVILEGE LOG**

Bates Label	Date	Description of Privileged Communication
DHS 061877	no date	Work Product
DHS 061886	01/05/05	Work Product
DHS 061895-061901	07/08/05	Work Product
DHS 062913-062927		Redaction of Applicant's Personal Information
DHS 062983	08/27/01	Attorney General's Office Letter to DHS
DHS 063034	11/8/01	Redaction of Applicant's Personal Information
DHS 063042	11/19/01	Redaction of Applicant's Personal Information
DHS 067794-067795	08/20/99	Attorney General's Office Memo to DHS
DHS 068171	08/29/00	Attorney General's Office Memo to DHS
DHS 068549	02/19/04	Attorney General's Office Memo to DHS
DHS 068891	06/22/00	Attorney General's Office Memo to DHS
DHS 069091	06/11/01	Attorney General's Office Memo to DHS
DHS 069202	06/11/01	Attorney General's Office Memo to DHS
DHS 069235	02/26/03	Attorney General's Office Memo to DHS
DHS 069399	10/28/03	Attorney General's Office Memo to DHS
DHS 070930	10/21/05	Redaction of Attorney-Client Privilege and Work Product Info
DHS 089318	08/30/05	Redaction of Private Medical Info - HIPPA
DHS Jamison J. 001155	06/21/05	Redaction of Attorney-Client Privilege and Work Product
DHS John A 000849-000850	12/23/05	Work Product